IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

Bail Appl..No. 5097 of 2007()

CRIME NO.268/07 OF CHERPU POLICE STATIN

PETITIONER : 2ND ACCUSED:

TONY, S/O.ELUVATHINGAL PATHROSE,
SASTHAMKADAVU DESOM, KODANNUR VILLAGE,
THRISSUR TALUK.

BY ADV. SRI.P.SANTHOSH (PODUVAL)

RESPONDENTS: COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, REPRESENTIG STATION HOUSE OFFICER,
CHERPU POLICE STATION, CHERPU, THRISSUR.

BY P.P. SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 5097 OF 2007

Dated this the 21st day of August, 2007

ORDER

Application for anticipatory bail. The petitioner is the 2nd accused in a crime. He along with the co-accused (4 in all) faces allegations under Secs.308 and 324 read with Sec.34 of the IPC. The crux of the allegations against the accused persons is that they – A1 and A2 are the brothers and A3 and A4 are their employees, in furtherance of their common intention, attacked the victims – three in number, with iron blocks and sword sticks. Injuries were caused to the three persons. The accused are named in the F.I.R. Investigation is in progress. The 1st accused has been arrested and enlarged on bail. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He has not been specifically named in the F.I.R. In the F.I.R., the 2nd accused is

shown only as the brother of the 1st accused. The petitioner further contends that the allegation under Sec.308 of the IPC has been included unnecessarily with the sole intention of vexing and harassing the accused. Thereby, it is attempted to deny bail to the petitioner for as long a period as possible as the offence under Sec.308 of the IPC is triable exclusively by the Court of Session.

3. This application is opposed by the learned Public Prosecutor. The learned Public Prosecutor submits that sufficient indications have been collected to convincingly point to the involvement of the accused persons including the petitioner. The nature of the weapons used, the manner of attack as also the nature of the injuries must suggest to the court that the inclusion of the offence punishable under Sec.308 of the IPC is not unjustified. At any rate, there are no circumstances justifying the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C., submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I am satisfied that this is a fit case where the petitioner must resort to the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate having

jurisdiction. He must then seek regular bail in the ordinary course. I find no features in this case which would justify the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C.

5. In the result, this Crl.M.C. is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge